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# “10 lessons for new clinicians”

*Angela Macfarlane and Paul McKeown<sup>1</sup>*

As a new clinician, if you have trained as a lawyer via a traditional legal education route you inevitably have very little experience of clinical education to bring to the role, although you of course have your professional and practical experience to draw on. Although many readers are experienced clinicians, this is a timely opportunity to go back to the beginning and re-assess the potential problems or risk areas that clinicians face at the beginning of a new academic year, with a new intake of students. Society changes continually so each year will bring new issues as well as those well known to all clinicians.

In clinic at Northumbria University final year students are placed in to groups of up to six students known as firms and each firm is allocated an area of law such as employment or housing. Each firm is supervised by a qualified solicitor who allocates cases to the students. Students can work individually or in pairs, depending on the complexity of the case. At the end of the academic year, students are assessed on their practical performance using grade descriptors. They also submit reflective pieces about their experiences in clinic.

These “lessons” have emerged from our own first year of transition from practising lawyer to clinical educator. We hope some of them ring true with other new clinicians.

## 1. Do not pre-judge the students

Clinic is about the student experience and therefore it should be the student who conducts a case, not the clinician. This causes concern for the new clinician as they will be ultimately responsible for the case. It would therefore be an easy option for the new clinician to vet the students to ensure the more academically gifted students work on the complex and more demanding cases. However, can this be justified; could or should a clinician pick and choose the cases each student receives?

The simple answer to this question is no. It cannot be justified as every student must have an equal opportunity to perform. What would be worse than being approached by a student after they have received their results and being told, “You didn’t give me the chance!”

Furthermore, if you vet the students and do not allow them an opportunity to perform, they may perform below expectation. Expectancy-value theory says that if anyone is to engage in an activity, they need to both value the outcome and to expect success in achieving it.<sup>2</sup> This theory supports

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<sup>1</sup> Angela Macfarlane is a senior lecturer in law at Northumbria University. Paul McKeown is a lecturer in law at Northumbria University. Both authors are clinicians in Northumbria University Student Law Office.

<sup>2</sup> Feather (1982) as per Biggs J, (2003), *Teaching for Quality Learning at University*, 2nd ed, Maidenhead, SRHE & Open University Press, p.58.

the proposition that we should challenge our students and expect success. If we do not, then the student will be less motivated to perform, and consequently the outcome will be below expectation.

## 2. Patience!

It can be frustrating how slowly the students progress in clinic which may be due to pre-suppositions about the students' motivation. If you subscribe to McGregor's (1960) theory Y about human trustworthiness which according to Biggs<sup>3</sup> is "...students do their best work when given freedom and space to use their own judgement ... allowing students freedom to make their own decisions..." you might expect quicker progress. However, whilst this is congruent with deeper levels of learning, the students may not yet have the confidence or learning experience to deal with the freedom.

Furthermore, expectations of a lawyer from private practice could be unrealistically high as the students' exposure to files is limited, whereas a trainee lawyer would have full time exposure to files. This freedom inevitably increases confidence and enhances progress, which is of course why clinical education is so valuable. As progress is generally slower in clinic to begin with, patience together with the clinician being able to guide the student to deep engagement by subscribing to McGregor's theory Y is required because "theory Y climate does not necessarily mean a disorganised teaching/learning environment. An organised setting, with clear goals and feedback on progress, is important for motivating students, and to the development of deep approaches."<sup>4</sup> Knowing where you are going, and feedback telling you how well you are progressing, heightens expectations of success. Driving in a thick fog is highly unpleasant and so is learning in one."<sup>5</sup> Getting to where you are going takes time, even without the predicament of thick fog which is why a clinician needs to have patience.

## 3. "The transition from student to professional does not always run smoothly"

The purpose of clinic is to enhance students' motivation from being just to attain a reward, such as a good grade (assessment motivated) or achievement motivated which Biggs describes as when "Students (may) learn in order to enhance their egos by competing against other students and beating them"<sup>6</sup> to intrinsic motivation where "there are no outside trappings necessary to make students feel good. They learn because they are interested in the task or activity itself."<sup>7</sup> Achieving this will lead to deeper learning, as opposed to surface learning. However, there could be problems when a student is not intrinsically motivated, who does not have commitment to their clients or respect for the rules and policies in clinic, essentially a student who does not have the ability to make appropriate judgements. If it was private practice, there is the option to dismiss the trainee, which is a strong motivation for compliance. In clinic at what point do you consider suspension or

3 Biggs.J. (2003) *Teaching for quality learning at university*, 2nd ed. Maidenhead, SRHE & Open University Press, p.64.

4 Hattie and Watkins 1988; Entwistle *et al.* 1989, as per Biggs.J. (2003) *Teaching for quality learning at university*, 2nd ed. Maidenhead, SRHE & Open

University Press, p.67.

5 Biggs.J. (2003) *Teaching for quality learning at university*, 2nd ed. Maidenhead, SRHE & Open University Press., p.67.

6 *Ibid.*, p.62.

7 *Ibid.*, p.62.

expulsion, or can you consider these at all? This is extremely tricky as you have to balance the needs of the student, the needs of the clients, the professional conduct rules, the clinician's practising certificate and of course the reputation of the clinic. If you do not take direct action these competing needs could all come crashing down like a pack of cards. In clinic at Northumbria University in the academic year 2007–2008 direct action was taken as 2 students were suspended for a period of time for serious breaches of policy and procedure. Once the students returned to clinic it was necessary to engage teaching practices more attuned to McGregor's (1960) theory X which Biggs describes as “operating to produce low trust, low risk, but low value;”<sup>8</sup> as compared to theory Y mentioned above “ which produces high trust, high risk and high value – if it works”.<sup>9</sup>

When these students do go into private practice they must adhere to a professional code of conduct. Whilst it was a harsh lesson to learn so early in their time in clinic, it had to be so even though it tipped the balance towards a more restrictive theory X learning environment. This was necessary due to the serious consequences of professional misconduct and to maintain clinic's professional reputation.

Do not forget that not all students are the same or have the ability to make judgments and validly evaluate situations so sadly the transition from student to professional may not always run smoothly.

#### **4. Whose file is it anyway?**

As a practitioner, you are responsible for your own files and unfortunately old habits die hard! Ultimately, if a student makes a mistake on the file, then you are responsible as if it were your own mistake. Consequently, this may have the effect of the clinician running the case with assistance from the student.

To answer the question whose file it is, we must first understand the concept of what clinic actually is. This is summed up by Stephen Wizner when he states:

*“On the most basic level, the law school clinic is a teaching office where students can engage in faculty-supervised law practice in a setting where they are called upon to achieve excellence in practice and to reflect upon the nature of that practice and its relationship to the law as taught in the class room and studied in the library. It is a method of teaching law students to represent clients effectively in the legal system, and at the same time to develop a critical view of that system. Law students in the clinic learn that legal doctrine, rules and procedure; legal theory; the planning and execution of legal representation of clients; ethical considerations; and social, economic and political implications of legal advocacy, are all fundamentally interrelated.”*<sup>10</sup>

It is essential that the file therefore belongs to the student as it is a teaching tool. To understand the legal system which we teach, the student must do the work, not observe it being done. As such, the file belongs to the student, and we as clinicians will assist!

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8 *Ibid.*, p.65.

9 *Ibid.*, p.65.

10 Stephen Wizner “The Law School Clinic: Legal Education in the Interests of Justice” 70 *Fordham L. Rev.* (2001–2002).

## **5. Answer a question with a question**

If we are therefore assisting the students with the files, how do we respond to a question; should the clinician answer that question?

The clinical experience is about teaching the students to be a professional. If we always give the students the answer, then they have not learnt and will not learn.

With acknowledgement to an experienced clinician, Professor Jay Pottenger,<sup>11</sup> he advised that you should answer a question with a question. The purpose of questioning the student is to guide and assist them in finding the right answer for themselves. If a student continues to struggle, then still don't give them the answer, sit down with them and look for the answer. If we are teaching students to be lawyers, we must therefore teach them the skills they will need in practice, not just the law. Once we have taught them the skills to find the answer themselves, they can apply those skills to future problems. It becomes noticeable that students will become less reliant on the clinician over the course of time.

Perkins (1991)<sup>12</sup> characterises the difference between the study skills of 'going beyond the information given' (BIG) and 'without the information given' (WIG). Conventional teaching, or BIG teaching, usually involves direct instruction to the students followed by thought orientated activities that challenge students so that they come to apply, generalise and refine their understanding.

In clinic however, we adopt the WIG approach to learning. Our students are encouraged to find their own solution to a problem through questioning and support. In the early years of their education, BIG teaching forms the foundation of knowledge of the subject and the skills. The students can then reconceptualise that knowledge and address the problems which arise in clinic (WIG). In other words, our students have already been taught the skills that they need to utilise and the legal principles which apply. They now have to apply those skills to the problem which has been presented.

## **6. Start at the end and work backwards**

In private practice, in contentious matters particularly, everything that you do on the file you have in mind how it will impact on a final hearing so you always think about the end right from the beginning. It should also be the same as a clinician because the students are there to gain skills and a qualification so for them to perform effectively you have to make them aware of what is expected of them. Be familiar with the learning outcomes and grade descriptors or other tools that you use to assess your students and make it clear to the students what is expected of them. Then remind them again and again! As for the practical work, sometimes experience is the only answer, which is why clinic is so valuable and effective as a teaching tool. It is difficult to front load the students at the beginning of the year, which is why clinicians in Northumbria University are experienced practitioners. However, when you think about the end, share your experiences with the students and consider making a visit to the final court or tribunal mandatory for the students because as a learning tool it is hugely effective and making it compulsory is a good balance of McGregor's theory X and Y.

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11 During visit to Northumbria University May 2008. 12 As per Biggs, J Op.cit. p.95.

## **7. Encourage expression of views**

A criticism of traditional academic teaching is that students are taught how to think ...well almost! Clinic gives students much more freedom to think and encourages discussion of their own social views, this of course helps with reflection, see lesson 8 below. If freedom of expression in a learning environment is promoted, students learn to differentiate their role as a legal advisor and their role in society with their own morals and views which leads to deeper learning. Clinicians will often agree with Jarvis<sup>13</sup> who supports Levinas' (1991) argument that learning is achieved through conversation. Students teaching each other is applicable to clinic because it points to the: “all-embracing social and cultural system which we take for granted; ...significance of the other (students) as persons (faces); importance of the interaction; mode of the interaction; intentions of the participants...”

For example within an Employment law clinic meeting, it is also great fun to listen to the students healthily debating issues such as whether the law was biased too much in favour of the employer or alternatively towards the employee. One Northumbria student was confident enough to express her own well thought out view that employees who are dismissed should spend more time and energy finding a new job rather than pursuing their claim, even though she knew that other members of the firm would be horrified at such views. However, all these students recognised that they had put aside their own views and acted professionally when dealing with their clients. So in summary the lesson here is that students do come from different backgrounds, are individuals and are all part of society where any view they hold can be expressed and can enhance their learning. You should ensure that it does not necessarily dictate their actions with clients or other professionals and that they appreciate there may well be differences between their own views and their obligations as professional legal advisors.

## **8. Do not expect the students to understand reflection!**

Reflection is an effective learning tool as it allows the students to identify any problems and identify how they can improve. As Biggs<sup>14</sup> says “Reflection... is rather like the mirror in Snow White: it tells you what you might be. This mirror uses theory to enable the transformation from the unsatisfactory what-is to the more effective what-might-be.” However, students really struggle with reflection, one student asked, just a few weeks before hand in date, whether you “are allowed to put down what you think.” But this lesson is a bit of a misnomer as in fact, despite their regularly voiced concerns of not understanding reflection, most students were able to demonstrate deep learning in their reflection papers, showing maturity and insight. With persistent supervisor support students will also be able to take their reflective practice with them in their future careers so clinic is also instrumental in engaging the students in lifelong learning so that the students have the best opportunity possible to achieve their career goals. Reflective practice is designed, amongst other things, to move away from assessment being just an end of course assessment but being incorporated into learning methods as it is done so successfully in clinic.

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13 Jarvis P. (2006) *The Theory & Practice of Teaching* 2nd edition, London and New York: Routledge Taylor & Francis Group pp.49–50.

14 Biggs J, *Op.cit* p.7.

## **9. Do not be afraid of assessment**

The idea of assessment in clinical legal education is a debate within itself. Northumbria University assesses its clinical students and therefore we have had to address the problems which it presents.

Clinical assessment is very difficult, particularly due to the inevitable subjectivity notwithstanding the assessment tools to be utilised. A clinician is likely to assess work over a period of time when a student may have performed very well but made one very big mistake. The work produced may be to a very high standard but the student needs to be chased for work. Alternatively a student may not produce high quality work but try very hard and produce work in a timely fashion. There are so many variables to take into account such as what weight should we attach to the various elements that we are likely to look at in assessing students.

The use of grade descriptors helped us to identify what makes a good student and what makes a poor student. The students were provided with the grade descriptors at the beginning of their clinical experience and therefore knew what was required of them. The use of grade descriptors assists in objectively justifying students' performance rather than entirely relying upon the clinician's view of the student. However, this does not resolve the problem of a differentiating between students who try but do not produce work of the quality that may be produced by students who needs to be chased.

## **10. ENJOY**

Our final lesson is to enjoy life as a clinician. Whilst at times being a clinician can be a very demanding job, it also very rewarding. Witnessing a student develop and grow in confidence is the reward for the hard work which has been invested. Throughout a clinical career, there will be numerous issues that arise. However, there is also an international clinical community out there willing to share its thoughts and ideas through conferences and informal discussions. After all, many of the issues we face are universal.





